

Table 36 – Comparison of 1999 ILEC and CLEC Access Lines

Regional Group	Population Category	1999 Residential & Business Lines				
		ILEC	%	CLEC	%	Total
Large Metro (Group 1)	Over 600,000	5,908,139	91.8	530,393	8.2	6,438,532
Suburban (Group 2)	Near Metro	895,389	88.6	115,644	11.4	1,011,033
Small and Medium Metro (Group3)	Other Large	1,846,335	94.7	102,685	5.3	1,949,020
Alamo Area Council of Governments	1-5,000					
Alamo Area Council of Governments	5,001-20,000	69,611	99.2	536	0.8	70,147
Alamo Area Council of Governments	20,001-100,000	215,998	99.3	1,472	0.7	217,470
Ark-Tex Council of Governments	1-5,000	550	77.9	156	22.1	706
Ark-Tex Council of Governments	5,001-20,000	36,535	99.0	387	1.0	36,922
Ark-Tex Council of Governments	20,001-100,000	121,241	99.1	1,117	0.9	122,358
Brazos Valley Council of Governments	1-5,000					
Brazos Valley Council of Governments	5,001-20,000	32,617	98.2	598	1.8	33,215
Brazos Valley Council of Governments	20,001-100,000	32,002	97.3	874	2.7	32,876
Capital Area Planning Council	1-5,000					
Capital Area Planning Council	5,001-20,000	22,995	97.6	556	2.4	23,551
Capital Area Planning Council	20,001-100,000	129,578	99.2	984	0.8	130,562
Central Texas Council of Governments	1-5,000	23,477	99.8	58	0.2	23,535
Central Texas Council of Governments	5,001-20,000	51,408	99.3	353	0.7	51,761
Central Texas Council of Governments	20,001-100,000	79,762	99.2	631	0.8	80,393
Coastal Bend Council of Governments	1-5,000	632	55.4	508	44.6	1,141
Coastal Bend Council of Governments	5,001-20,000	17,879	99.0	185	1.0	18,064
Coastal Bend Council of Governments	20,001-100,000	140,152	99.1	1,281	0.9	141,433
Concho Valley Council of Governments	1-5,000	21,278	98.6	301	1.4	21,579
Concho Valley Council of Governments	5,001-20,000	3,984	99.3	27	0.7	4,011
Concho Valley Council of Governments	20,001-100,000					
Deep East Texas Council of Governments	1-5,000					
Deep East Texas Council of Governments	5,001-20,000	22,775	96.3	879	3.7	23,654
Deep East Texas Council of Governments	20,001-100,000	378,217	98.7	5,156	1.3	383,373
East Texas Council of Governments	1-5,000					
East Texas Council of Governments	5,001-20,000	82,525	99.3	556	0.7	83,081
East Texas Council of Governments	20,001-100,000	180,258	99.1	1,647	0.9	181,905
Golden Crescent Regional Planning Com.	1-5,000					
Golden Crescent Regional Planning Com.	5,001-20,000	38,310	99.1	365	0.9	38,675
Golden Crescent Regional Planning Com.	20,001-100,000	59,392	98.8	733	1.2	60,125
Heart of Texas Council of Governments	1-5,000					
Heart of Texas Council of Governments	5,001-20,000	59,312	99.4	340	0.6	59,652
Heart of Texas Council of Governments	20,001-100,000	37,961	98.4	634	1.6	38,595
Houston-Galveston Area Council	1-5,000					
Houston-Galveston Area Council	5,001-20,000	11,166	95.5	522	4.5	11,688
Houston-Galveston Area Council	20,001-100,000	316,596	97.4	8,335	2.6	324,931
Middle Rio Grande Development Council	1-5,000	7,710	98.4	124	1.6	7,834
Middle Rio Grande Development Council	5,001-20,000	10,916	97.5	280	2.5	11,196
Middle Rio Grande Development Council	20,001-100,000	48,858	99.0	495	1.0	49,353
North Central Texas Council of Gov'ts	1-5,000					
North Central Texas Council of Gov'ts	5,001-20,000	32,756	98.0	683	2.0	33,439
North Central Texas Council of Gov'ts	20,001-100,000	1,084,092	99.3	8,014	0.7	1,092,106
North Texas Regional Planning Com.	1-5,000	10,500	93.8	698	6.2	11,198
North Texas Regional Planning Com.	5,001-20,000	51,030	97.8	1,167	2.2	52,197

Regional Group	Population Category	1999 Residential & Business Lines				
		ILEC	%	CLEC	%	Total
North Texas Regional Planning Com.	20,001-100,000					
Panhandle Regional Planning Commission	1-5,000	17,464	71.5	6,953	28.5	24,417
Panhandle Regional Planning Commission	5,001-20,000	59,657	93.9	3,865	6.1	63,522
Panhandle Regional Planning Commission	20,001-100,000	39,321	96.3	1,494	3.7	40,815
Permian Basin Regional Planning Com.	1-5,000	7,759	93.6	534	6.4	8,293
Permian Basin Regional Planning Com.	5,001-20,000	45,454	97.4	1,234	2.6	46,688
Permian Basin Regional Planning Com.	20,001-100,000	15,243	94.8	828	5.2	16,071
Rio Grande Council of Governments	1-5,000	7,016	98.4	117	1.6	7,133
Rio Grande Council of Governments	5,001-20,000	285	75.8	91	24.2	376
Rio Grande Council of Governments	20,001-100,000					
South Plains Association of Governments	1-5,000	3,874	97.1	117	2.9	3,991
South Plains Association of Governments	5,001-20,000	30,969	98.6	449	1.4	31,418
South Plains Association of Governments	20,001-100,000	31,774	96.2	1,256	3.8	33,030
South Texas Development Council	1-5,000	2,528	90.2	276	9.8	2,804
South Texas Development Council	5,001-20,000	10,226	95.5	487	4.5	10,713
South Texas Development Council	20,001-100,000	16,887	97.6	409	2.4	17,296
Texoma Council of Governments	1-5,000					
Texoma Council of Governments	5,001-20,000					
Texoma Council of Governments	20,001-100,000	35,594	99.1	315	0.9	35,909
West Central Texas Council of Gov'ts	1-5,000	22,889	98.0	471	2.0	23,360
West Central Texas Council of Gov'ts	5,001-20,000	81,972	98.4	1,304	1.6	83,276
West Central Texas Council of Gov'ts	20,001-100,000	21,155	96.9	684	3.1	21,839

12,532,003 **93.9** 810,259 **6.1** 13,342,262

Source: Public Utility Commission

Table 37 – Comparison of 1998 ILEC and CLEC Revenues

Regional Group	Population Category	1998 Residential & Business Revenue				
		ILEC	%	CLEC	%	Total
Large Metro (Group 1)	Over 600,000	1,140,090,685	95.3	56,098,286	4.7	1,196,188,971
Suburban (Group 2)	Near Metro	140,049,684	91.1	13,636,940	8.9	153,686,624
Small and Medium Metro (Group3)	Other Large	312,839,808	96.7	10,539,058	3.3	323,378,865
Alamo Area Council of Governments	1-5,000					
Alamo Area Council of Governments	5,001-20,000	10,150,390	99.8	24,834	0.2	10,175,224
Alamo Area Council of Governments	20,001-100,000	36,694,154	99.8	68,016	0.2	36,762,170
Ark-Tex Council of Governments	1-5,000	139,141	99.8	266	0.2	139,407
Ark-Tex Council of Governments	5,001-20,000	5,342,550	100.0	0	0.0	5,342,550
Ark-Tex Council of Governments	20,001-100,000	16,043,924	99.9	16,077	0.1	16,060,001
Brazos Valley Council of Governments	1-5,000					
Brazos Valley Council of Governments	5,001-20,000	4,084,422	99.3	29,729	0.7	4,114,151
Brazos Valley Council of Governments	20,001-100,000	3,273,953	98.6	46,811	1.4	3,320,764
Capital Area Planning Council	1-5,000					
Capital Area Planning Council	5,001-20,000	2,461,242	100.0	777	0.0	2,462,019
Capital Area Planning Council	20,001-100,000	16,537,940	99.9	20,738	0.1	16,558,678
Central Texas Council of Governments	1-5,000	175,074	99.8	313	0.2	175,387
Central Texas Council of Governments	5,001-20,000	3,688,940	99.9	3,311	0.1	3,692,251
Central Texas Council of Governments	20,001-100,000	3,345,020	99.6	13,571	0.4	3,358,591
Coastal Bend Council of Governments	1-5,000	72,799	100.0	0	0.0	72,799
Coastal Bend Council of Governments	5,001-20,000	2,413,105	99.4	14,416	0.6	2,427,521
Coastal Bend Council of Governments	20,001-100,000	20,453,845	99.8	39,376	0.2	20,493,221
Concho Valley Council of Governments	1-5,000	2,347,822	99.5	11,963	0.5	2,359,785
Concho Valley Council of Governments	5,001-20,000	492,341	99.9	432	0.1	492,773
Concho Valley Council of Governments	20,001-100,000					
Deep East Texas Council of Governments	1-5,000					
Deep East Texas Council of Governments	5,001-20,000	2,360,648	95.4	115,098	4.6	2,475,746
Deep East Texas Council of Governments	20,001-100,000	59,525,362	98.6	816,367	1.4	60,341,729
East Texas Council of Governments	1-5,000					
East Texas Council of Governments	5,001-20,000	7,339,735	100.0	1,835	0.0	7,341,570
East Texas Council of Governments	20,001-100,000	17,586,922	99.7	49,858	0.3	17,636,780
Golden Crescent Regional Planning Com.	1-5,000					
Golden Crescent Regional Planning Com.	5,001-20,000	5,982,958	99.6	24,485	0.4	6,007,443
Golden Crescent Regional Planning Com.	20,001-100,000	10,022,442	99.6	39,569	0.4	10,062,011
Heart of Texas Council of Governments	1-5,000					
Heart of Texas Council of Governments	5,001-20,000	8,727,865	99.8	17,654	0.2	8,745,519
Heart of Texas Council of Governments	20,001-100,000	4,280,287	92.2	362,684	7.8	4,642,971
Houston-Galveston Area Council	1-5,000					
Houston-Galveston Area Council	5,001-20,000	1,745,908	98.8	20,551	1.2	1,766,459
Houston-Galveston Area Council	20,001-100,000	53,536,054	77.4	15,646,508	22.6	69,182,562
Middle Rio Grande Development Council	1-5,000	927,210	99.4	5,262	0.6	932,471
Middle Rio Grande Development Council	5,001-20,000	1,823,386	99.6	7,744	0.4	1,831,130
Middle Rio Grande Development Council	20,001-100,000	7,484,710	99.8	12,889	0.2	7,497,599
North Central Texas Council of Gov'ts	1-5,000					
North Central Texas Council of Gov'ts	5,001-20,000	467,797	99.0	4,651	1.0	472,448
North Central Texas Council of Gov'ts	20,001-100,000	185,095,079	99.7	537,406	0.3	185,632,485
North Texas Regional Planning Com.	1-5,000	1,104,402	98.9	12,002	1.1	1,116,404

Regional Group	Population Category	1998 Residential & Business Revenue				
		ILEC	%	CLEC	%	Total
North Texas Regional Planning Com.	5,001-20,000	7,396,129	95.5	345,013	4.5	7,741,142
North Texas Regional Planning Com.	20,001-100,000					
Panhandle Regional Planning Commission	1-5,000	2,433,234	99.2	19,593	0.8	2,452,827
Panhandle Regional Planning Commission	5,001-20,000	8,822,532	98.1	174,631	1.9	8,997,163
Panhandle Regional Planning Commission	20,001-100,000	6,203,179	98.5	95,632	1.5	6,298,811
Permian Basin Regional Planning Com.	1-5,000	1,194,487	99.6	4,266	0.4	1,198,754
Permian Basin Regional Planning Com.	5,001-20,000	7,009,440	98.3	123,384	1.7	7,132,824
Permian Basin Regional Planning Com.	20,001-100,000	2,756,921	98.7	37,256	1.3	2,794,177
Rio Grande Council of Governments	1-5,000	726,415	100.0	302	0.0	726,717
Rio Grande Council of Governments	5,001-20,000	47,354	97.3	1,334	2.7	48,688
Rio Grande Council of Governments	20,001-100,000					
South Plains Association of Governments	1-5,000	527,681	99.9	762	0.1	528,443
South Plains Association of Governments	5,001-20,000	4,642,442	97.0	142,889	3.0	4,785,331
South Plains Association of Governments	20,001-100,000	4,476,652	97.8	101,288	2.2	4,577,940
South Texas Development Council	1-5,000	447,893	99.9	576	0.1	448,469
South Texas Development Council	5,001-20,000	1,396,606	99.8	2,633	0.2	1,399,239
South Texas Development Council	20,001-100,000	2,049,154	99.8	3,544	0.2	2,052,698
Texoma Council of Governments	1-5,000					
Texoma Council of Governments	5,001-20,000					
Texoma Council of Governments	20,001-100,000	4,867,019	99.8	9,900	0.2	4,876,919
West Central Texas Council of Gov'ts	1-5,000	3,595,314	99.9	2,297	0.1	3,597,611
West Central Texas Council of Gov'ts	5,001-20,000	10,963,546	99.5	51,243	0.5	11,014,789
West Central Texas Council of Gov'ts	20,001-100,000	2,508,395	99.7	8,221	0.3	2,516,616

2,160,771,998 95.6 99,364,239 4.4 2,260,136,236

Table 38 – Comparison of 1999 ILEC and CLEC Revenues

Regional Group	Population Category	1999 Residential & Business Revenue				
		ILEC	%	CLEC	%	Total
Large Metro (Group 1)	Over 600,000	1,187,016,172	88.3	156,742,378	11.7	1,343,758,549
Suburban (Group 2)	Near Metros	149,507,742	84.6	27,280,185	15.4	176,787,927
Small and Medium Metro (Group3)	Other Large	336,148,683	95.0	17,779,206	5.0	353,927,888
Alamo Area Council of Governments	1-5,000					
Alamo Area Council of Governments	5,001-20,000	11,004,238	99.7	32,274	0.3	11,036,512
Alamo Area Council of Governments	20,001-100,000	39,856,364	99.4	243,497	0.6	40,099,861
Ark-Tex Council of Governments	1-5,000	147,933	85.9	24,382	14.1	172,315
Ark-Tex Council of Governments	5,001-20,000	5,529,296	99.9	6,907	0.1	5,536,203
Ark-Tex Council of Governments	20,001-100,000	16,798,931	99.6	72,839	0.4	16,871,770
Brazos Valley Council of Governments	1-5,000					
Brazos Valley Council of Governments	5,001-20,000	4,481,279	98.8	54,569	1.2	4,535,848
Brazos Valley Council of Governments	20,001-100,000	3,498,711	96.8	114,756	3.2	3,613,467
Capital Area Planning Council	1-5,000					
Capital Area Planning Council	5,001-20,000	2,702,055	99.9	2,639	0.1	2,704,694
Capital Area Planning Council	20,001-100,000	18,906,240	99.8	39,228	0.2	18,945,468
Central Texas Council of Governments	1-5,000	188,130	96.4	6,953	3.6	195,083
Central Texas Council of Governments	5,001-20,000	3,886,306	99.9	5,626	0.1	3,891,932
Central Texas Council of Governments	20,001-100,000	3,646,921	99.1	32,229	0.9	3,679,150
Coastal Bend Council of Governments	1-5,000	76,409	65.4	40,445	34.6	116,854
Coastal Bend Council of Governments	5,001-20,000	2,494,211	98.7	32,354	1.3	2,526,565
Coastal Bend Council of Governments	20,001-100,000	24,169,125	99.3	173,473	0.7	24,342,598
Concho Valley Council of Governments	1-5,000	2,438,134	98.5	37,837	1.5	2,475,971
Concho Valley Council of Governments	5,001-20,000	509,695	99.9	520	0.1	510,215
Concho Valley Council of Governments	20,001-100,000					
Deep East Texas Council of Governments	1-5,000					
Deep East Texas Council of Governments	5,001-20,000	2,623,498	93.7	175,910	6.3	2,799,408
Deep East Texas Council of Governments	20,001-100,000	64,637,771	98.0	1,347,748	2.0	65,985,519
East Texas Council of Governments	1-5,000					
East Texas Council of Governments	5,001-20,000	7,637,866	99.7	25,227	0.3	7,663,093
East Texas Council of Governments	20,001-100,000	18,896,151	97.8	420,928	2.2	19,317,080
Golden Crescent Regional Planning Com.	1-5,000					
Golden Crescent Regional Planning Com.	5,001-20,000	6,501,545	99.3	47,881	0.7	6,549,426
Golden Crescent Regional Planning Com.	20,001-100,000	10,679,028	99.5	49,139	0.5	10,728,167
Heart of Texas Council of Governments	1-5,000					
Heart of Texas Council of Governments	5,001-20,000	9,332,248	99.7	30,057	0.3	9,362,305
Heart of Texas Council of Governments	20,001-100,000	4,907,943	91.0	487,740	9.0	5,395,683
Houston-Galveston Area Council	1-5,000					
Houston-Galveston Area Council	5,001-20,000	1,890,412	99.1	17,125	0.9	1,907,536
Houston-Galveston Area Council	20,001-100,000	58,368,721	76.7	17,773,325	23.3	76,140,046
Middle Rio Grande Development Council	1-5,000	1,005,136	98.4	16,386	1.6	1,021,522
Middle Rio Grande Development Council	5,001-20,000	1,941,259	98.7	24,976	1.3	1,966,235
Middle Rio Grande Development Council	20,001-100,000	7,859,484	98.7	107,017	1.3	7,966,502
North Central Texas Council of Gov'ts	1-5,000					
North Central Texas Council of Gov'ts	5,001-20,000	576,771	97.0	17,877	3.0	594,448
North Central Texas Council of Gov'ts	20,001-100,000	199,114,966	99.5	966,023	0.5	200,080,990
North Texas Regional Planning Com.	1-5,000	1,153,738	96.1	47,422	3.9	1,201,160
North Texas Regional Planning Com.	5,001-20,000	8,014,638	92.0	692,698	8.0	8,707,336

Regional Group	Population Category	1999 Residential & Business Revenue				
		ILEC	%	CLEC	%	Total
North Texas Regional Planning Com.	20,001-100,000					
Panhandle Regional Planning Commission	1-5,000	2,490,847	94.9	132,773	5.1	2,623,620
Panhandle Regional Planning Commission	5,001-20,000	9,190,907	94.6	523,133	5.4	9,714,040
Panhandle Regional Planning Commission	20,001-100,000	7,077,551	94.9	380,662	5.1	7,458,212
Permian Basin Regional Planning Com.	1-5,000	1,298,189	99.0	12,763	1.0	1,310,952
Permian Basin Regional Planning Com.	5,001-20,000	7,354,664	97.9	158,446	2.1	7,513,110
Permian Basin Regional Planning Com.	20,001-100,000	2,905,050	94.8	160,565	5.2	3,065,615
Rio Grande Council of Governments	1-5,000	786,877	99.1	7,214	0.9	794,092
Rio Grande Council of Governments	5,001-20,000	48,825	88.5	6,320	11.5	55,145
Rio Grande Council of Governments	20,001-100,000					
South Plains Association of Governments	1-5,000	560,331	98.7	7,416	1.3	567,747
South Plains Association of Governments	5,001-20,000	4,951,372	94.4	292,095	5.6	5,243,467
South Plains Association of Governments	20,001-100,000	4,774,550	93.7	320,341	6.3	5,094,891
South Texas Development Council	1-5,000	466,467	98.3	8,167	1.7	474,634
South Texas Development Council	5,001-20,000	1,488,720	99.0	15,510	1.0	1,504,230
South Texas Development Council	20,001-100,000	2,104,456	95.4	100,478	4.6	2,204,934
Texoma Council of Governments	1-5,000					
Texoma Council of Governments	5,001-20,000					
Texoma Council of Governments	20,001-100,000	5,359,373	99.4	31,050	0.6	5,390,423
West Central Texas Council of Gov'ts	1-5,000	3,824,581	99.6	17,248	0.4	3,841,829
West Central Texas Council of Gov'ts	5,001-20,000	11,812,837	98.6	170,419	1.4	11,983,256
West Central Texas Council of Gov'ts	20,001-100,000	2,646,302	99.5	12,491	0.5	2,658,793

2,287,287,649 91.0 227,326,666 9.0 2,514,614,315

Source: Public Utility Commission

APPENDIX K: THE SWBT MEGA-ARBITRATION

ORIGINAL SOUTHWESTERN BELL TELEPHONE (SWBT) ARBITRATIONS: PUC DOCKET NOS. 16189, 16196, 16226, 16285 AND 16290.¹²³

In 1996, pursuant to the FTA, five would-be competitors filed for arbitration of interconnection issues with SWBT. To facilitate administration, the Commission consolidated the petitions of these companies into one proceeding, informally termed the “SWBT mega-arbitration.” In two different phases of hearings held in 1996 and 1997, the Commission heard testimony on issues that included performance standards, terms and conditions of reselling services and purchasing unbundled network elements (UNEs), services and elements that are subject to wholesale, reciprocal compensation, discounts for resold services, and prices for UNEs. The Commission issued its final awards in the mega-arbitration on September 30 and December 19, 1997; it also issued later clarifications of the awards. Some of the major issues decided in the SWBT mega-arbitration are as follows:

The use of Total Element Long Run Incremental Cost (TELRIC) is the appropriate methodology for pricing UNEs.

In its August 1996 local-competition rules, the Federal Communications Commission (FCC) decreed that state commissions should set UNE prices equal to the sum of the UNE’s TELRIC and a “reasonable” share of forward-looking common costs. Accordingly, the PUC adopted this methodology. In July 1997, however, the 8th Circuit Court of Appeals, in *Iowa Utilities Board*,¹²⁴ ruled that states are able to choose their own pricing methodology, rather than be required to use the TELRIC methodology mandated by the FCC. Nevertheless, this ruling had no effect on the PUC’s pricing methodology, because the PUC had developed an independent justification of the TELRIC methodology. The Commission determined that when retail-related costs such as

¹²³ *Petition of MFS Communications Company, Inc., for Arbitration of Pricing of Unbundled Loops*, Docket No. 16189 (Feb. 27, 1998); *Petition of Teleport Communications Group, Inc. for Arbitration to Establish an Interconnection Agreement*, Docket No. 16196, (Feb. 27, 1998); *Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company*, Docket No. 16226, (Feb. 27, 1998); *Petition of MCI Telecommunication Corporation and Its Affiliate MCI Metro Access Transmission Services, Inc. for Arbitration and Request for Mediation Under the Federal Telecommunications Act of 1996*, Docket No. 16285, (Feb. 27, 1998); *Petition of American Communications Services, Inc. and Its Local Exchange Operating Subsidiaries for Arbitration with SWBT Pursuant to the Telecommunications Act of 1996*, Docket No. 16290 (Feb. 27, 1998).

¹²⁴ *Iowa Utilities Board v. FCC*, 109 F.3d 418 (8th Cir. 1996). (In 1999 the U.S. Supreme Court upheld this ruling in *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 371-372, 119 S. Ct. 721, 726-27 (1999)).

advertising and billing were not considered, the total forward-looking economic costs recovered by a company with prices equal to TELRIC plus an allocation of economic common costs would be equal to the total forward-looking economic costs recovered by a company with prices equal to the total service long run incremental cost (TSLRIC) plus an allocation of economic common costs. Because the Commission has a cost rule that provides guidelines for calculating TSLRIC and forward-looking common costs, and this standard is referred to multiple times in PURA, the Commission determined that it would be appropriate to mandate the use of TELRIC in calculating prices for UNEs. The Commission used this reasoning to set permanent TELRIC-based prices in the second Phase of the SWBT mega-arbitration.

The loop UNE should be further unbundled into distribution and feeder portions.

Believing that it would be economically prudent and competitively beneficial to allow subloop unbundling, the Commission exercised the option given by the FCC to further unbundle the loop element into feeder and distribution portions. Specifically, the Commission required SWBT to offer as unbundled elements (1) in the distribution segment, the loop segment extending between a remote-terminal site and the end-user's premises; (2) in the feeder segment, only the dark fiber and the 4-wire copper cable conditioned for DS-1 service; and (3) the digital loop carrier (a device for multiplexing, or combining, communication channels).

SWBT should perform the work necessary to connect combinations of UNEs ordered by competitive carriers, and should be compensated for this work.

The Commission held SWBT to its voluntary commitment to combine UNEs in lieu of providing competitors direct access to its network, and set rates that allowed SWBT to recover the forward-looking economic cost of performing the work for the CLECs.

SWBT must offer all retail services for resale at a 21.6% avoided cost discount.

The Commission determined that if SWBT were to provide service on a wholesale basis only, it would avoid an average of 21.6% of its current costs. In addition, the Commission determined that this discount should apply to all retail telecommunications service offerings, except promotional offerings of 90 days or less.

Each local service provider, including SWBT, should absorb its own costs of providing interim number portability (INP).

The Commission determined that few customers would be willing to change local-service providers without INP. The Commission also recognized that all facilities-based local service providers would have to incur (or already had incurred) costs related to implementing INP.

Later, the FCC decreed that all ILECs serving in the nation's 100 largest metropolitan statistical areas must implement permanent local number portability (LNP). Such implementation occurred in five phases, ending December 31, 1998. ILECs serving smaller communities are required to provide LNP if they receive a bona fide request. ILECs are allowed to recover their LNP implementation costs by assessing a monthly flat

fee on all of their access lines, for a period not to exceed five years. SWBT's monthly fee is \$.33 per line.

SWBT must provide real-time electronic interfaces for operation support system (OSS) functions.

The Commission determined that to level the competitive playing field, competitors need access to the same types of electronic billing, ordering, and provisioning systems that SWBT uses for itself in interactions with its own customers on a real-time basis at parity with SWBT's access. Making such systems available to competitors was extraordinarily controversial because it required modifications to SWBT's systems to handle orders from outside parties using different computer applications. SWBT worked with the petitioners to develop new systems and modify existing ones to give CLECs billing, ordering, and provisioning parity with SWBT. Rates, terms, conditions, and implementation schedules were set for certain functions, weighing forward-looking economic concerns with the difficulties of designing the necessary systems.

To win approval of its 271 application, SWBT had to demonstrate to the Commission and the FCC that its fully electronic OSS could properly handle commercial volumes of service orders of various types from different providers. Even now, SWBT's OSS continues to be monitored and modified, in response to input from the Commission staff and competitors. Penalties are imposed on SWBT if it fails to meet OSS-related performance measures; it also is required to upgrade its OSS software as new technological enhancements are developed and industry standards change.

CLECs requesting an electronic interface with SWBT are subject to a monthly charge, but SWBT agreed to waive this charge for three years as a condition of its 1999 merger with Ameritech. CLECs still pay a fee for each service order placed using SWBT's OSS.

The company using the switch port is entitled to all toll revenue associated with that switch port.

The Commission determined that when a competitive provider purchases a switch port from SWBT, the competitor is entitled to all access revenues associated with the UNEs purchased, along with toll revenues.

CLECs who opt into another CLEC's agreement with SWBT can, on a limited basis, "pick and choose" provisions to opt into.

Most favored nation (MFN) provisions allow a CLEC to choose to place parts of an agreement another CLEC may have made with SWBT into its own agreement with SWBT. Although the FCC interpreted such provisions as allowing a CLEC to select small bits and pieces from other contracts, the U.S. EIGHTH Circuit Court of Appeals rejected this interpretation in 1997. In the Commission's mega-arbitration negotiations, however, SWBT offered to allow a CLEC to opt into another CLEC's contract with SWBT so long as it opted into large sections of the contract, rather than only individual rates, terms, or conditions. The Commission incorporated this provision into its order, and in 1998 applied this principle in the SWBT vs. Waller Creek arbitration. In 1999 the

U.S. Supreme Court partially reversed the Eighth Circuit's 1997 order, ruling that an ILEC can only require a CLEC to accept those terms in an existing agreement that are "legitimately related" to the desired provision. In August of 2000, the U.S. Fifth Circuit Court of Appeals upheld the Commission's "pick and choose" policy, ruling that the SWBT vs. Waller Creek arbitration award was consistent with the interpretation enunciated by the U.S. Supreme Court.¹²⁵

¹²⁵ *Southwestern Bell Telephone Company v. Waller Creek Communications, Inc.*; *Public Utility Commission of Texas*, No. 99-50752, 2000 U.S. App. (5th Cir., August 21, 2000); *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 371-372, 119 S. Ct. 721, 726-27 (1999).

APPENDIX L: PROCEEDINGS TO IMPLEMENT 1999 TEXAS LEGISLATION

Commission Proceedings to implement telecommunications legislation passed by the Texas Legislature in 1999 include the proceedings listed below.

Texas Universal Service Fund

Project No. 21162: Project to Establish Procedures for Providing USF Support for Schools Pursuant to PURA §56.028

Adopted 9/23/99. The purpose of this project was to establish an interim procedure for small and rural incumbent local exchange companies (SRILECs) to receive Texas Universal Service Funds (TUSF) pursuant to PURA § 56.028, relating to universal service fund reimbursements for certain IntraLATA service.¹²⁶ The SRILECs were able to receive funds through a permanent mechanism implemented upon adoption of P.U.C. SUBST. R. § 26.410 in Project No. 21163.

Project No. 21163: Rulemaking to Amend the Texas Universal Service Fund Rules to Comply with SB 560 pursuant to PURA, §§ 56.021, 56.023, 56.024, 56.026, 56.028, and 56.072

Adopted 4/27/00. The purpose of this project was to amend the Texas Universal Service Fund (TUSF) rules to comply with SB 560. The Commission adopted amendments to P.U.C. SUBST. R. §§ 26.401, 26.403, 26.404, 26.413, 26.414, 26.415, 26.417, and 26.418, and added new § 26.410 relating to the TUSF. These revisions affect all telecommunications carriers that receive TUSF support. The revisions include adding the method used to determine support allocation when unbundled network elements (UNEs) are used to provision service, clarify discounts that are applied to certain services, and establish the circumstances in which an eligible telecommunications provider (ETP) designation can be relinquished.

Affiliate Issues

Project No. 21164: Rulemaking to Address Affiliate Issues for Telecommunications Service Providers Pursuant to PURA §§54.102, 60.164, and 60.165

Adopted 8/24/00. This project addressed the structural and transactional requirements for a holder of a CCN and its affiliated telecommunications service providers applying for or

¹²⁶ Request for information and comments (9/8/99) and Order Establishing Interim Procedures for the Disbursement of Texas Universal Service Funds Pursuant to PURA §56.028 (10/4/99).

holding a COA or SPCOA. Staff published initial questions and received comments on January 18, 2000. A public workshop was held January 23, 2000 on staff's proposed strawman rule. Parties filed post-workshop comments on March 3, 2000. After evaluating the parties' comments, staff decided to merge this project with Project No. 21165 and consider all affiliate matters concurrently. Staff issued revised questions on June 9, 2000.

Conformance Rule Review

Project No. 21160: Rulemaking to Address PURA Chapter 59 Withdrawal of Election and Switched Access Rates; PURA, Sections 59.021, 59.024, and 59.025; [Merged with] Project No. 21169: Review of Substantive Rules to Conform to SB 560

Approved 9/7/00 (§26.5) and 11/1/00 (§26.274). The purpose of Project No. 21169 was to make minor conforming changes to P.U.C. Substantive Rules that, although affected by the changes to PURA created with SB 560, were not sufficiently affected as to require the initiation of separate rulemaking projects. Project No. 21160 was merged with Project No. 21169.

Publication of the first of two sets of proposed rule changes was delayed to coordinate with the publication of several rules relating to Chapter 58, Incentive Regulation. The first set, containing additions and modifications to P.U.C. SUBST. R. § 26.5, Definitions, was adopted in September 2000. The second set, containing minor conforming changes to P.U.C. SUBST. R. §26.274, Imputation, was adopted in November, 2000.

Workforce Diversity

Project No. 21170: Compliance Proceeding for Utilities' 5-Year Plans to Enhance Workforce Diversity; PURA, § 52.256

Filings received 1/1/00. This project established a mechanism for telecommunications utilities to file workforce diversity plans as established in SB 560.

Project No. 22166: Rulemaking to Establish Procedures for Telecommunication Utilities' Annual Report of Workforce Diversity

Adopted 6/29/00. The purpose of this project was to establish procedures for telecommunications utilities to comply with the new reporting requirement regarding workforce diversity.

Dark Fiber

Project No. 21171: Rulemaking to Address Municipalities or Certain Municipal Electric Systems Leasing Excess Capacity of Fiber Optic Cable Facilities; PURA § 54.2025

Closed July 17, 2000. This project addressed PURA § 54.2025, which provides that a municipality, or certain municipal electric systems may lease excess capacity of fiber optic cable facilities (dark fiber), so long as it is done on a nondiscriminatory, nonpreferential basis. A rule was not necessary at the time. Disputes are handled on a case-by-case basis.

CLEC Access Charges

Project No. 21174: Rulemaking to Address COA/SPCOA Switched Access Rates; PURA § 52.155

Adopted 6/29/00. The purpose of this project was to address COA/SPCOA switched access rates. The project established procedures for the Commission's review of switched access rates in excess of the rates charged by the territory's CCN holder.

Telecom Bill Simplification

Project No. 22130: Rulemaking to Implement PURA § 55.012, Relating to Telecommunications Bill Format

Adopted 7/26/00. This project, which was split off from Project No. 21423, Telephone Customer Protection Standards, revised P.U.C. SUBST. R. § 26.25, Issuance and Format of Bills, to implement PURA § 55.012. The new PURA provision calls for LECs to issue simplified, easy-to-understand bills for local exchange telephone service.

New P.U.C. SUBST. R. § 26.25, which replaces the previous version of P.U.C. SUBST. R. § 26.25, requires certificated telecommunications utilities (telecommunication utilities holding a CCN, COA, or SPCOA) to comply with minimum bill information and format guidelines, and to clarify information disseminated to residential customers in order to reduce complaints of slamming and cramming. New P.U.C. SUBST. R. § 26.25 implements these requirements pursuant to the mandates set forth in the PURA, most particularly in § 55.012, Telecommunications Billing, but also in PURA § 17.003(c) and § 17.004(a)(8), and in the FCC's Truth-in-Billing rules (47 C.F.R. § 64.2000 and § 64.2001 (1999)). PURA § 55.012, Telecommunications Billing, called on LECs to issue simplified, easily understood bills for local service. PURA § 55.012(c) stated that to the extent allowed by law, such bills are to include aggregate charges for each of the following: (1) basic local service, (2) optional services, and (3) taxes.

The new rule was intended to decrease confusion associated with the proliferation of charges on residential customers' telephone bills for separate services and products and of related surcharges, fees, and taxes. However, the Commission may revisit billing issues that continue to be an area of concern.

Matters of significant importance included the following:

- Whether the rule should apply in its entirety to all CTUs, or just all LECs (which by PURA definition include holders of a CCN or a COA, but not holders of an SPCOA). The adopted rule applies to all certificated telecommunications utilities.
- Exactly what information should be required to appear on the first page of a residential customer's bill. This was the biggest area of interest; the adopted rule is considerably less prescriptive in this regard than was the version published for comment. The adopted rule requires only that the first page include the grand total due for all services billed, the payment due date, and a notification of any change in service provider. Also, CLECS took the position that differentiation in a competitive market is one standard for choosing formatting for bills.

- What the required compliance date should be for implementing the mandated changes. The adopted rule requires compliance within six months of the effective date, meaning February 15, 2001.
- Whether certificated telecommunications utilities could issue bills solely over the Internet. The adopted rule requires that a residential customer receive his/her bill via the United States mail, "unless the customer agrees with the utility to receive a bill through different means, such as electronically via the Internet." As explained in the rule preamble, this language allows the holder of an SPCOA, but not a holder of a CCN or a COA, from promoting itself as a company that bills over the Internet only.
- Whether surcharges imposed on a percentage-of-revenue basis could be included only in the basic local subtotal, or would have to be prorated between basic local service and optional services. The adopted rule permits the certificated telecommunications utility either to include the portion of such surcharges related to local service in the basic local subtotal or to allocate that portion between basic local service and optional local services on a proportionate basis.
- Whether to require the itemization (in dollars and cents) of surcharges included in the subtotals for basic local service and optional services. The adopted rule allows the certificated telecommunications utility discretion on this matter; however, if the specific amount of each assessment is not shown on the bill, the utility must clearly indicate on the bill a toll-free method, including a toll-free number, by which the customer may obtain information regarding the amount and method of calculation of each surcharge.
- Whether to require a specific statement on the bill of the amount the customer must pay to avoid having his/her basic local service disconnected. The adopted rule does not require such a statement; instead, it requires the certificated telecommunications utility to clearly and conspicuously identify on the bill those charges for which non-payment will not result in disconnection of basic local service, or to clearly and conspicuously identify on the bill those charges for which non-payment will result in disconnection of basic local service. As noted in the preamble, a specific statement of the amount the customer must pay to avoid disconnection will suffice for this purpose; it is also required by P.U.C. SUBST. R. 26.28 to be included in any disconnection notice sent to a residential customer.

IXC Flow Through of Reduced Access Charges

Project No. 21172: Declaratory Order to address interexchange carriers' access charge reduction pass-through filings.

Adopted 9/7/99. In this proceeding, the Commission established Sworn Affidavits of Completion as the mechanism for interexchange carriers to fulfill the requirements of PURA §52.112, which relates to rate reduction pass-through requirements. The specific minute of use data submitted and sworn to in the affidavits is considered highly confidential information by IXCs. A Declaratory Order was issued in September 1999 covering USF Docket Nos. 18515 and 18516, and PURA § 58.301, which relates to switched access rate reduction.

Project No. 21173: Compliance project to address interexchange carriers access charge reduction pass-through filings.

Adopted 6/29/00. In this proceeding initial access pass-through filings were submitted by AT&T, Worldcom, and Sprint (March 1, 2000) covering access reductions for the period beginning September 1, 1999. Supplemental filings of additional information were submitted in April of 2000. A review of information submitted by AT&T, Worldcom, and Sprint indicates reductions to Basic Rate Schedules as high as \$0.05 per minute were made for in-state long distance calls. Additionally, the affidavits indicated that residential subscribers received their proportionate share of switched access reductions in compliance with the requirements of PURA.

SWB Access Charge Reductions

Project No. 21184: Southwestern Bell Telephone Company notice of intent to file amended tariff sheets to implement reductions in its switched access service tariff in compliance with SB 560.

Adopted 9/1/99. PURA § 58.301(1) states that, effective September 1, 1999, an electing company with greater than five million access lines in the state shall reduce its switched access rates on a combined originating and terminating basis by one cent a minute. In this proceeding SWBT proposed implementing the one-cent reduction required by Section 58.301(1) by eliminating the one-cent Originating Residual Interconnection Charge remaining after the Second Interim Order in Docket No. 18515. The commission approved the application after consideration of the comments from all of the parties involved in the proceeding.

Project No. 22302: Application of Southwestern Bell Telephone company for approval of switched access service rate reduction pursuant to PURA §58.301(2)

Adopted 7/6/00. PURA § 58.301(2) states that, by no later than July 1, 2000 an electing company with greater than five million access lines in the state shall reduce its switched access rates on a combined originating and terminating basis by two cents a minute. In this proceeding, SWBT proposed implementing the one-cent reduction required by § 58.301(2) by reducing the Terminating Carrier Common Line Charge by two cents. The commission approved the application after an analysis of prior access reductions and no protest from the parties involved in the proceeding.

Project No. 21158: Compliance Project to Implement Switched Access Rates Reductions; PURA § 58.301

Initiated 7/27/99. This project was established for the reductions described in the above projects. This project was not used. The 1 cent reduction was implemented under Project No. 21184, and the 2 cent reduction was implemented in Project No. 22302.

Chapters 52, 58 & 59: Pricing Flexibility

At the September 7, 2000 open meeting, the commission adopted seven new rules that implement provisions of SB 560. Additionally, the commission repealed two existing rules made obsolete by adoption of the new rules.

There are two significant areas of importance in these rules. First, P.U.C. SUBST. R. §§ 26.225, 26.226, 26.227, and 26.229 were proposed with an anticompetitive standard in the form of a rebuttable presumption that placed the burden of proof upon an electing company to

show that the price of a service or package of services is not anticompetitive.¹²⁷ The commission concluded that an anticompetitive standard is more appropriately developed on a case-by-case basis because a single rebuttable presumption may not adequately address the range of anticompetitive behaviors over which the commission has jurisdiction pursuant to PURA. The commission, therefore, deleted the rebuttable presumption from the adopted versions of the rules. However, the commission required incumbent LECs to furnish information, in their informational filing packages, about the relevant TELRIC-based wholesale prices and the retail prices for the service or package being offered. An interested party may rely on this information to initiate a complaint regarding anticompetitive pricing by an incumbent LEC.

Second, P.U.C. SUBST. R. §§ 26.226, 26.227, 26.228 and 26.229 were adopted by the commission with provisions that establish standards regarding the packaging and joint marketing of regulated services with unregulated products or services and/or with the products or services of an electing company's affiliate. Upon adoption, the provisions were expanded to obtain greater assurance regarding potential anticompetitive practices related to packaging and joint marketing.

Project No. 21155: Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies

Adopted 9/7/00. New P.U.C. SUBST. R. § 26.226, *Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies*, set forth the substantive requirements related to pricing flexibility. The rule affects Chapter 58 electing companies. Through the adoption of the rule, the commission made its rules consistent with PURA and clarified standards required of Chapter 58 electing companies for exercising pricing flexibility.

Repealed 9/7/00. P.U.C. SUBST. R. § 26.212, *Procedures Applicable to Chapter 58 Electing Incumbent Local Exchange Companies* and P.U.C. SUBSTANTIVE R. § 26.213, *Telecommunications Pricing*, were repealed. These rules were no longer necessary because of changes mandated by SB 560 and P.U.C. SUBST. R. §§ 26.224, 26.225, 26.226, and 26.227.

Project No. 21156: Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies

Adopted 9/7/00. New P.U.C. SUBST. R. § 26.224, *Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies*, set forth the procedural and substantive requirements for changing the rates of basic network services. The rule affects Chapter 58 electing companies. Through the adoption of P.U.C. SUBST. R. § 26.224, the commission made its rules consistent with PURA regarding the realignment from three types of services to two (basic and non-basic), and clarified the standards and procedures required of Chapter 58 electing companies for offering basic network services to customers.

Project No. 21157: Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies

Adopted 9/7/00. New P.U.C. SUBST. R. § 26.225, *Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies*, established the substantive requirements relating to nonbasic services, including new services. The rule affects Chapter 58 electing companies. Through the adoption of the rule, the commission made its rules consistent with PURA and

¹²⁷ Specifically, the rebuttable presumption stated that the price of a service or package of services is anticompetitive if it is lower than the sum of the total element long run incremental cost (TELRIC)-based wholesale prices of components needed to provide the service or package.

clarified the standards required of Chapter 58 electing companies for offering nonbasic services to customers.

Project No. 21159: Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Carriers (ILECs)

Adopted 9/7/00. New P.U.C. SUBST. R. § 26.214, *Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Carriers (ILECs)*, set forth the substantive and procedural requirements for LRIC studies filed by Chapter 52 companies and Chapter 59 electing companies. Through adoption of the rule, the commission made its rules consistent with PURA and clarified the standards required of Chapter 52 companies and Chapter 59 electing companies for submitting LRIC studies to the commission.

Project No. 21159: Requirements Applicable to Chapter 52 Companies

Adopted 9/7/00. New P.U.C. SUBST. R. § 26.228, *Requirements Applicable to Chapter 52 Companies*, set forth the substantive and procedural requirements regarding new services, pricing and packaging flexibility, customer promotional offerings, and customer specific contracts. The rule affects companies regulated under PURA, Chapter 52. Through adoption of the rule, the commission made its rules consistent with PURA and clarified the standards and procedures applicable to companies regulated under PURA, Chapter 52.

Project No. 21159: Requirements Applicable to Chapter 59 Electing Companies

Adopted 9/7/00. New P.U.C. SUBST. R. § 26.229, *Requirements Applicable to Chapter 59 Electing Companies*, set forth the substantive and procedural requirements regarding new services, pricing and packaging flexibility, customer promotional offerings, and customer specific contracts. The rule affects companies that elect to be regulated under PURA, Chapter 59. Through adoption of the rule, the commission made its rules consistent with PURA and clarified the standards and procedures applicable to companies that elect to be regulated under PURA, Chapter 59 for exercising flexibility and offering new services.

Project No. 21161: Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies

Adopted 9/7/00. New P.U.C. SUBST. R. § 26.227, *Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies*, set forth the procedural requirements for nonbasic services and pricing flexibility. The rule affects Chapter 58 electing companies. Through adoption of the rule, the commission implemented a procedure necessary to allow for an efficient and timely review of service offerings and established a complaint process contemplated by SB 560 in connection with information notice filings.

Municipal Franchise

Project No. 20935: Rulemakings to Implement the Provisions of HB 1777 or Section 283 of the Local Government Code

P.U.C. SUBST. R. § 26.461, Relating to Access Line Categories

Adopted 10/21/99. New P.U.C. SUBST. R. § 26.461 applies to certificated telecommunication providers (CTPs) (defined as persons with a certificate of convenience and necessity, certificate of operation authority, or service provider certificate of operating authority

to offer local exchange telephone service) and to municipalities in the State of Texas. HB 1777 required the Commission to establish no more than three categories of access lines. This section establishes three competitively neutral, non-discriminatory categories of access lines for statewide use in establishing a uniform method for compensating municipalities for the use of a public right-of-way by CTPs. CTPs urged the Commission to establish not more than one category for administrative simplicity. Municipalities, on the other hand, unanimously requested the Commission to establish three categories. The Commission adopted three categories as it would offer Texas cities maximum flexibility to design municipal rates for their citizens. The three categories would also allow cities to establish lower rates for residential users compared to business customers.

P.U.C. SUBST. R. § 26.463, Relating to Calculation and Reporting of a Municipality's Base amount

Adopted 10/21/99. New P.U.C. SUBST. R. § 26.463 establishes a uniform method for determining a municipality's base amount and for calculating the value of in-kind services provided to a municipality under an effective franchise agreement or ordinance by CTPs, and sets forth relevant reporting requirements. It applies to all municipalities in the State of Texas.

The cities and the CTPs were divided in their opinion over whether the accounting methodology used to calculate the 1998 base amount should be based on a calendar year or fiscal year. There were also significant disagreements on whether to use cash or revenue based accounting methods to calculate the 1998 base amount. Several cities also argued that the escalation provisions under HB 1777 were perpetual and that the base amount would have to be adjusted every year by the amount of escalation provisions in terminated contracts. The commission adopted rules to require cities to use calendar year 1998 as the base year for calculating the 1998 base amount. However, the commission rules gave the cities the flexibility to use revenues "due" for year 1998 to calculate the base amount for that year.

The Commission disagreed with the cities that the escalation provisions were perpetual. The adopted rules allowed escalation only until March, 2000 – the date by which rates had to be established by the Commission. The Commission concluded that escalation provisions in terminated contracts do not carry over beyond March, 2000. Further, the Commission noted that there is no mention in the statute about revising the base amount by escalation every year.

P.U.C. SUBST. R. § 26.465, Relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunication Providers

Adopted 1/7/00. New P.U.C. SUBST. R. § 26.465 establishes a uniform method for counting access lines within a municipality by category as provided by §26.461 (relating to Access Line Categories), sets forth relevant reporting requirements, and sets forth certain reseller obligations under the Local Government Code, Chapter 283. The provisions apply to CTPs in the State of Texas.

CTPs and Cities had several disagreements over the line counting methodology. The commission adopted rules to require CTPs to count one access line for every end user in a manner consistent with the definition of access lines in HB 1777.

P.U.C. SUBST. R. § 26.467, relating to Rates, Allocation, Compensation, Adjustments and Reporting

Adopted 5/1/00. New P.U.C. SUBST. R. § 26.467 establishes the following:

- (1) rates for categories of access lines;

- (2) default allocation for municipalities;
- (3) adjustments to the base amount and allocation;
- (4) municipal compensation; and
- (5) associated reporting requirements.

The provisions of this section apply to CTPs and to municipalities in the State of Texas. Cities objected to the Commission proposal that the default allocation should be on a ratio of 1:1:1. The Commission revised its original proposal and adopted an allocation ratio that was an average of the ratios submitted by the CTPs.

Customer Protection - SB 86

Project No. 20787: Payphone Compliance

Adopted 3/1/00. This project included the review of old P.U.C. SUBST. R. § 23.54, relating to *Pay Telephone Service* as required by the Appropriations Act of 1997, HB 1, Article IX, Section 167. As a result of this review, the Commission repealed P.U.C. SUBST. R. § 23.54, relating to *Pay Telephone Service*, and added new § 26.102, relating to *Registration of Pay Telephone Service Providers*, as well as new §§ 26.341 through 26.347.

Project No. 21006: Protection Against Unauthorized Billing Charges ("Cramming")

Adopted 10/21/99. P.U.C. SUBST. R. § 26.32, *Protection Against Unauthorized Billing Charges ("Cramming")*, was adopted to implement the provisions concerning unauthorized charges on telephone bills as set forth in SB 86, now incorporated in PURA §§ 17.151-17.158. The rule applies to all "billing agents" and "service providers." The rule includes requirements for billing authorized charges, verification requirements, responsibilities of billing telecommunications utilities and service providers for unauthorized charges, customer notice requirements, and compliance and enforcement provisions. The rule ensures protection against cramming without impeding prompt delivery of products and services, minimizes cost and administrative requirements, and ensures consistency with FCC anti-cramming guidelines.

Project No. 21030: Limitations on Local Telephone Service Disconnections

Adopted 12/1/99. Amendments to P.U.C. SUBST. R. § 26.21, relating to *General Provisions of Customer Service and Protection Rules*; § 26.23, relating to *Refusal of Service*; § 26.24, relating to *Credit Requirements and Deposits*; § 26.27, relating to *Bill Payment and Adjustments*; § 26.28, relating to *Suspension or Disconnection of Service*; and § 26.29, relating to *Prepaid Local Telephone Service (PLTS)*, were adopted to implement SB 86, now incorporated in PURA § 55.012. These amendments (1) prohibit discontinuance of residential basic local service for nonpayment of long distance charges; (2) require that residential service payment first be applied to basic local service; (3) require a local service provider to offer and implement toll blocking to limit long distance charges after nonpayment for long distance service, and allow disconnection of local service for fraudulent activity; and (4) establish a maximum price that a local exchange company may charge a long distance service provider for toll blocking. The amendments apply to all local telephone service providers.

Project No. 22706: Discrimination, PURA Section 17.004(a)(4)

Adopted 11/16/00. This project resulted in changes to the Commission's rule language relating to geography and income. Policies contained in P.U.C. SUBST. R. § 26.4 were amended

to be in compliance with PURA. Specific mechanisms to implement and enforce the prohibitions on discrimination in P.U.C. SUBST. R. § 26.4 were included in Project No. 21423. The rules apply to all telecommunications providers.

Project No. 21419: Customer's Right to Choice (Slamming)

Adopted 6/14/00. An amendment to P.U.C. SUBST. R. § 26.130, Selection of Telecommunications Utilities, was adopted to implement SB86, now incorporated in PURA § 17.004(a)(5) and §§ 55.301-55.308. The amendment (1) eliminates the distinction between carrier-initiated and customer-initiated changes, (2) eliminates the information package mailing (negative option) as a verification method, (3) absolves the customer of any liability for charges incurred during the first 30 days after an unauthorized telecommunications utility change, (4) prohibits deceptive or fraudulent practices, (5) requires consistency with applicable federal laws and rules, and (6) addresses the related issue of preferred telecommunications utility freezes. The rule applies to all telecommunications utilities.

Project No. 21420: Administrative Penalties

Adopted 2/10/00. An amendment to P.U.C. PROC. R. § 22.246, Administrative Penalties, was adopted to implement SB86, now incorporated in PURA § 15.024. The amendment eliminates the 30 day "cure period" for violations of PURA Chapters 17, 55, and 64, clarifies that a violator may not opt to pay a penalty without taking appropriate corrective action, and incorporates the term "continuing violation."

Project No. 21421: Customer Proprietary Network Information, PURA § 17.004

Merged into project 21423. The project team met and reviewed the new statutory language concerning the privacy of customer consumption and credit information. The team concluded that no changes were needed to P.U.C. SUBST. R. § 26.122. Additional language to address these specific protections was addressed in Project No. 21423. There are ongoing federal proceedings as well on this subject.

Project No. 21422: Automatic Dial Announcing Devices

Adopted 1/27/00. An amendment to P.U.C. SUBST. R. § 26.125 was adopted to implement PURA § 55.126. The amendment shortens from 30 seconds to five seconds the amount of time an automatic dialing device must disconnect from a called person. The rule applies to all operators of automatic dial announcing devices.

Project No. 21423: Telephone Customer Service Rules: PURA §§ 17.003(c), 17.004, and 17.052(3)

Adopted 11/16/00. The purpose of this project was to recast existing customer protection rules for the new, competitive environment. Key issues were (1) applicability of rules to dominant certificated telecommunications utilities (DCTUs) and nondominant certificated telecommunications utilities (NCTUs), (2) failure of NCTUs to release lines, (3) discrimination protections, (4) prohibition of fraudulent, unfair, misleading, deceptive, and anti-competitive practices and (5) information disclosures.

Consumer groups and most DCTUs proposed that the customer service and protection rules apply equally to all certificated telecommunications utilities. In support of their position, these commenters made the following points: PURA requires uniform standards for all certificated telecommunications utilities; perspective for the rules should be the customer, not the classification of the provider; uniform rules will encourage more participation by giving some

assurance to reluctant consumers that the market will operate fairly; and since NCTUs indicated that they cannot survive unless they provide better service than DCTUs, then adhering to the DCTU standards should not be a problem.

NCTUs favored bifurcated rules with less restrictive requirements for NCTUs. In support of their position, NCTUs made the following points: PURA encourages competition, distinguishes between DCTUs and NCTUs in many areas, and does not require uniform rules for all certificated telecommunications utilities; the commission should apply regulatory mandates only when the market fails; uniform regulation is appropriate only when competitors are equally situated; and equal application of rules would create substantial burdens and costs for NCTUs and inhibit competition.

The adopted rules provide strong protections for all customers, while allowing some flexibility to NCTUs to encourage increased competition. Ultimately, a highly competitive local telecommunications market will benefit all customers.

Project No. 21424: Prepaid Calling Card Disclosures

Adopted 7/12/00. P.U.C. SUBST. R. § 26.34, *Telephone Prepaid Calling Services*, was adopted to implement PURA § 55.253. The rule applies to all prepaid calling services companies. The rule prescribes standards regarding the information a prepaid calling card company shall disclose to customers concerning rates and terms of service.

Project No. 21456: Certification, Registration and Reporting

Adopted 6/29/00. Amendments to P.U.C. SUBST. R. §26.107, *Registration of Nondominant Telecommunications Carriers*, § 26.109, *Standards for Granting of COAs*, and § 26.111, *Standards for Granting SPCOAs*, and new § 26.114, *Suspension or Revocation of COAs and SPCOA*, were adopted to implement PURA §§ 17.051-17.053. The amendments and new rule establish registration requirements for all nondominant carriers, require registration as a condition for doing business in Texas, establish customer service and protection standards, and address suspension or revocation of COAs and SPCOAs. The purpose of this project was to amend certification, registration, and reporting requirements for SPCOA/COA applicants to reflect legislative authority to revoke or suspend the certification of telecommunications utilities.

Pending Projects

Project No. 21329: Low Income/Automatic Enrollment, PURA § 17.004(f)

Scheduled adoption on 1/11/2001. This project will establish terms and conditions necessary for automatic enrollment of eligible telephone customers into Lifeline service and will result in an amendment to P.U.C. SUBST. R. § 26.412, *Lifeline Service and Link Up Service Programs*. The commission staff is continuing to work with the Texas Department of Human Services on an implementation plan for automatic enrollment of Lifeline services.

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Case No.	Company Name	Date
Basic Local		
TD-2002-104	US Telco, Inc.	9/5/01
TD-2002-100	Broadband Office Communications Inc.	8/29/01
TD-2002-64	Socket Communications Group	8/14/01
TD-2002-37	OnSite Access Local, LLC	8/10/01
TD-2002-25	Digital Access Corp of Missouri, Inc.	8/10/01
TD-2002-6	eVoice Telecom, Inc.'s	7/31/01
TD-2001-705	BlueStar Networks, Inc.'s	7/3/01
TD-2001-675	NET-tel Corp.	6/19/01
TD-2001-637	GE Capital Communications Services Corp	5/30/01
TD-2001-355	CapRock Telecommunications Corp.	2/13/01
TD-2001-378	Teligent Inc.	1/23/01
TD-2001-302	C.C.O. Telecom Inc.	11/17/00
TD-2001-183	Megsinet-CLEC Inc.	10/12/00
TD-2001-855	MiComm Services, Inc.	7/13/00

